IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.4761 OF 1999

Mr.Akhtar Daud Pathan. ...Petitioner.
Vs.
Secretary, P.W. Dept. & Ors. ...Respondents.
....
Mr. A. R. Pitale for the Petitioner.
Mrs. M.P. Thakur, AGP for the Respondents.
.....
CORAM : KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.

March 23, 2006.

P.C. (Per Dr. D.Y. Chandrachud, J.):

By an order dated 2nd June 1983 issued by the Executive Engineer, Mahad (Public Works) Division, the Petitioner was engaged as a Diesel Road Roller Driver on a work charged establishment on a pay of Rs.260/- per month, in the pay scale of Rs.260-10-390-15-420-Extn-15-495, under the control of the Executive Engineer E.G.S. Division No.I, Thane. On 17th June 1988, the Petitioner came to be placed in the Converted Regular Temporary Establishment, in the pay scale of Rs. 750-12-870-EB-14-940. On 4th May 1989, a Criminal Case under Sections 26(f), 41(2)(b) and 41(h) of the Indian Forest Act and Sections 379, 411 read with 34 of the Penal Code, was registered at the Shahapur

Police Station against the Petitioner. It was alleged that on 4th May 1989 at about 17.30 hours, information was received that stolen teak wood was to be carried in a tanker. The officials conducted a raid, stopped a tanker bearing registration No.MCU 1705 and interrogated the accused who admitted that he had brought wooden planks in the compartment of the tanker. The tanker belonged to the Public Works Department of the Shahapur Division. After the tanker was brought to the Range Forest Office, wooden planks were found in its compartment. During the course of the investigation, it was stated that the house of the accused was raided and teak wood came to be recovered. The allegation was that the teak wood had been cut from a reserved forest. The Petitioner was taken into custody and released on bail.

2. On 2nd June 1989, an order was passed by the Sub Divisional Engineer, the effect and purport whereof was to terminate the services of the Petitioner in view of the incident that had taken place and the criminal complaint which had been lodged. It appears that on 29th July 1989 and 22nd August 1989, the Petitioner made representations for being taken back on duty. The Petitioner, however, was not reinstated at that stage.

3. The Criminal proceedings ended in an order of acquittal dated 27th April 1998 of the Judicial Magistrate, First Class, Shahapur. The Judicial Magistrate, First Class, ruled that though the testimony of the complainant and the other staff members supported the case of the prosecution, the panchas had not supported the prosecution case. The seizure panchanama was not proved and no independent witness had been examined; all the witnesses who supported the prosecution being employees of the Forests Department, the Judicial Magistrate, First Class, held that they were interested witnesses and that they had been unable to state the width and length of the seized wooden planks. The seizure panchanama did not reveal the width and length of wooden planks. The prosecution was, therefore, held as not having proved the case beyond reasonable doubt and an order of acquittal was passed.

4. After the order of acquittal, the Petitioner made a representation dated 26th May 1998 for reinstatement in service and since the plea was not accepted, the Petitioner filed Original Application 661 of 1998 before the Maharashtra Administrative

Tribunal, on 2nd December 1998. On 8th March 1999, the Petitioner was furnished with a copy of an order dated 1st March 1999 by which an appointment for a period of six months was given to him. The order stated that the Petitioner would not be entitled to any arrears of salary from the date of termination of his services and that if his conduct is found to be satisfactory, the appointment would be extended. The Petitioner amended the application before the Tribunal to challenge the order dated 1st March 1999. The Original Application was dismissed by the Tribunal by an order dated 23rd July 1999.

5. On 28th July 1999, the services of the Petitioner came to be terminated with effect from 1st August 1999. The Petitioner challenged the fresh order of termination in Original Application 517 of 1999. The order of termination was stayed pending disposal of the application on 5th August 1999. On a difference between the Judicial and the Administrative Members, the application was eventually placed for hearing before the Chairperson of the Administrative Tribunal. The Learned Chairperson agreed with the view of the Judicial Member that the termination was improper and in the light of that order dated 10th

January 2000, the application came to be allowed by the Tribunal on 24th January 2000. The termination of the services on 28th July 1999 was held to be illegal and was quashed. The Petitioner was directed to be reinstated in service together with consequential benefits. The Court is informed that the order of the Tribunal has attained finality and that it has not been challenged by the Respondents any further.

6. The only question which survives in these proceedings is whether the Petitioner would be entitled to back wages between 2nd August 1989 and the date of his reinstatement in pursuance of the order dated 1st March 1999. Counsel appearing on behalf of the Petitioner states that the Petitioner has been granted continuity of service and that, therefore, the petition survives and is pressed only in respect of back wages.

7. Having heard Counsel appearing on behalf of the Petitioner and the Learned AGP, we are of the view that the claim for back wages for the aforesaid period cannot be sustained for more than one reason. First and foremost, the order of dismissal was issued on 2nd June 1989. Though Counsel appearing on

behalf of the Petitioner faintly suggested that the language of the order itself is vague, there is no doubt about the position that the effect and purport of the order was to terminate the services of the Petitioner. That is in fact, how the Petitioner construed the order. The Petitioner moved the Administrative Tribunal, to challenge the order of termination over nine years after the date of termination on 2nd December 1998. The Petitioner adverts to two representations but even those were of July and August 1989. The pendency of the Criminal Proceedings cannot be a ground for the Petitioner not to have challenged the order of termination that was passed on 2nd June 1989 for nine years. This delay, in our view, is in itself sufficient to disentitle the Petitioner to back wages. Secondly, we have also perused the order of acquittal passed by the Judicial Magistrate, First Class, Shahapur on 27th April 1998. A reading of that order does not suggest that there was a clean acquittal in favour of the Petitioner. The Judicial Magistrate, First Class, noted that the witnesses who deposed, had supported the case of the prosecution, but their testimony was discarded on the ground that they were employees of the Forest Department and were considered to be interested witnesses. The correctness of that order does not fall for our determination since the order of

acquittal was not challenged. Be that as it may, for the purposes of these proceedings we have perused the order and do not find that there was a clean acquittal in that case. We, therefore, decline to accede to the only prayer which is made before us to the effect that the Petitioner should be granted back wages.

8. For all these reasons, we are of the view that there is no merit in the petition. The Petition shall accordingly stand dismissed. In the circumstances of the case, there shall be no order as to costs.

CHIEF JUSTICE

Dr.D. Y. Chandrachud, J.